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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2645/2015*, **

Communication submitted by:	Vladislav Chelakh (represented by Serik Sarsenov, Kazakhstan International Bureau for Human Rights and Rule of Law)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	2 February 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 25 August 2015 (not issued in document form)
Date of adoption of Views:	7 November 2017
Subject matter:	Trial and conviction of the author to life imprisonment
Procedural issues:	Substantiation of claims
Substantive issues:	Arbitrary detention; fair trial; right to counsel of one's own choosing; right to have adequate time and facilities for the preparation of a criminal defence; right not to confess guilt
Articles of the Covenant:	9 (1) and 14 (1) and (3) (b), (d) and (g)
Articles of the Optional Protocol:	1 and 3

1. The author of the communication is Vladislav Chelakh, a national of Kazakhstan born in 1992. He claims that the State party has violated his rights under articles 9 (1) and 14 (1) and (3) (b), (d) and (g) of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is represented by counsel, Serik Sarsenov.

* Adopted by the Committee at its 121st session (16 October-10 November 2017).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

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Factual background

2.1 On 25 November 2011, the author was called up for military service at military unit No. 8484, which was part of the Kazakhstan Border Service, under the auspices of the Committee for National Security of Kazakhstan. Upon an order of his commander, he was sent to serve at the Arkan-Kergen temporary border post, which is part of the Sari Bokter border division, a remote area on the border between Kazakhstan and China.

2.2 On 10 May 2012, the author arrived at the border post together with his fellow servicemen. Several servicemen were already there. He submits that he started his military service without any issues, and had normal relationships with his fellow soldiers and his military commanders.

2.3 Starting from 28 May 2012, the border post failed to report to the main border division. On 30 May 2012, the commander of the division sent two military communication specialists to the border post to check the situation. When they arrived at the border post late that afternoon, they found several burned bodies and scorched buildings. At a nearby house that belonged to a local huntsman, K.R., they found K.R.'s body with multiple gunshot wounds.

2.4 An investigation unit arrived on 31 May 2012 and found the burned bodies of 14 military servicemen and K.R.'s body. They also found pieces of exploded hand grenades, bullets and bullet shells from pistols and machine guns.

2.5 On 4 June 2012, the author was found hiding in a remote shepherds' hut. He told the patrol that the border post had been attacked by several unknown persons on 28 May 2012, his fellow servicemen had been killed and he had been able to escape. The author submits that from 4.50 p.m. on 4 June 2012, when he was apprehended and handcuffed, he considered himself to be under arrest.

2.6 The author submits that, in violation of article 68 (2) of the Code of Criminal Procedure, he was not allowed to contact his family by telephone and he was not allowed to choose a lawyer. Instead, he was appointed a lawyer, T.G., who was chosen by the investigators.

2.7 From 11.16 p.m. on 4 June 2012 until 5.11 a.m. on 5 June 2012, the author was interrogated as a suspect. He stated that on the day of the incident, 28 May 2012, he had been on duty. Around 5 a.m., he had seen one of his fellow servicemen running and shouting, "Run, we are under attack", and he had run away. He denied killing anyone. In violation of article 134 of the Code of Criminal Procedure, he was not allowed to meet with his lawyer in private and he was pressured into writing a confession.[1] The detention protocol was completed at 5.35 a.m. on 5 June 2012, while the de facto detention commenced at 4 p.m.[2] on 4 June 2012, 13 hours and 35 minutes before that. Article 134 (1) of the Code of Criminal Procedure requires that it be completed no more than three hours from the moment of arrest.[3]

2.8 On 6 June 2012, the author was charged with multiple murders under article 96 of the Criminal Code and was interrogated as the accused. On 16 July 2012, the author's privately retained counsel, Mr. Sarsenov, requested in writing to receive copies of the procedural documents concerning the author's interrogations as a suspect and as the accused, and the authors' testimony given at the crime scene. That request was rejected by the investigative body on 17 July 2012 on the grounds that those documents had already been provided to the State-appointed counsels T.G. and B., who had been assigned to the case before Mr. Sarsenov.

[1] No further detailed information about the pressure is provided. Kazakh law prohibits using evidence obtained under duress or torture, but the author claims that that provision was ignored. He refers to articles 213, 216 and 218 of the Code of Criminal Procedure.

[2] There are discrepancies concerning the exact time at which the author was discovered in the remote hut, ranging between 4 and 4.50 p.m.

[3] Art. 134 (1) of the Code of Criminal Procedure provides that, within a period of no longer than three hours after the actual detention, the investigator or the interrogating officer must compile a report in which he or she must indicate the reasons, motives, place and exact time of detention, the results of the personal search and the time at which the report was compiled.

2.9 On 25 July 2012, the author retracted his confession, saying that it had been obtained through deception (*обман*). The author also submits that he was interrogated during the night, in violation of article 212 (2) of the Code of Criminal Procedure.[4] Articles 213, 216 and 218 of the Code prohibit using evidence obtained under duress.

2.10 On 1 October 2012, the author was charged with additional crimes, including theft of private property, illegally obtaining State secrets, destruction of military equipment and defecting, under articles 145, 172, 175, 251, 255, 373 and 378 of the Criminal Code. Just one day later, he was informed that the preliminary investigation had been completed and that his case would be sent to court for trial. On 2 October 2012, the author was officially notified that he could have access to the criminal file, together with his counsel, B.[5] The file consisted of 56 volumes of 250 pages each, and the author and his lawyer had only 15 days[6] to go through it and prepare for the trial. The allotted time was insufficient and was not in accordance with the provisions of article 275 (1-3) of the Code of Criminal Procedure.

2.11 During the trial, there were numerous breaches of provisions of the Code of Criminal Procedure. The court allowed the testimony of the expert, K.S., who, the author claims, does not have the necessary qualifications to be an expert on explosives. During the hearings, the author's position was often ignored. He complained to the court about a number of violations during his arrest and detention, but his claims were ignored. His lawyer requested that the court call a psychiatric expert, but that request was denied. During one of the hearings, the author's lawyer, Mr. Sarsenov, was ill and could not be present. The court refused to postpone the hearing and appointed another lawyer, S.E., who was not familiar with the case. During the trial, out of 47 reasoned written and oral motions of the defence, the court allowed only 4. In the court hearing of 21 November 2012, Mr. Sarsenov requested a new psychiatric expert opinion. The court refused the motion and noted that a psychiatric evaluation had been conducted during the pretrial investigation and had been concluded in August 2012.

2.12 The author submits that on 21 November 2012, frustrated with all the procedural irregularities, he refused to participate in the court hearings. The judge insisted that the defendant participate in all court hearings, which the author considers a form of pressure to testify. His counsel, Mr. Sarsenov, was not able to participate in the court hearing on 29 November 2012 that took place after the lunch break as he had suffered a hypertensive crisis. Counsel S.E. requested the court to adjourn the court hearing, as he was not able to provide the author with the necessary qualified legal aid. He was familiar with only three volumes containing the secret documents, to which Mr. Sarsenov had no access, and had not studied the other 53 volumes. Counsel S.E. also made an alternative motion to be given time to study the rest of the file. The court rejected both motions on the ground that S.E. had become acquainted with the file during the pretrial investigation and in the course of the trial. On 30 November 2012, a court hearing did not take place by reason of the absence of both counsels due to illness.[7] On the same day, the court appointed a new lawyer, Z.S., as defence counsel, without the author's agreement. During the court hearing on 4 December 2012, in the absence of counsels Mr. Sarsenov and S.E., new defence counsel Z.S. represented the author alone. She was passive and did not submit any requests to the court or take any action in the interest of her client. The next day, when the court hearing took place with the participation of Mr. Sarsenov, S.E. and Z.S., she stated that she had had to study all 56 volumes of the case in two days, from 1 to 3 December 2012. On 11 December 2012, the specialized interdistrict military court found the author guilty as charged and sentenced him to life imprisonment.

2.13 On 6 February 2013, the appellate chamber for criminal cases of the military court of Kazakhstan rejected the author's appeal and upheld the first instance court decision. The author considers that the appeal court did not carry out an effective review of his criminal case, as it failed to study all the evidence, as required by the Code of Criminal Procedure. Mr. Sarsenov's request for further explanation about the evidence was rejected. The appeal

[4] The State party claims that interrogations can be carried out at night if there are extraordinary circumstances.

[5] The State party claims that all counsels were informed, but the author's privately retained counsel was abroad at the time, and was expected to return on 14 October 2012.

[6] The author also refers to "10 working days".

[7] It appears that Mr. Sarsenov also refused to participate in the trial in protest and in support of his client's decision not to be present at the hearings.

court also rejected the author's claims that his confession had been obtained under psychological pressure. On 21 June 2013, the author's cassation appeal was rejected by the cassation chamber of the military court of Kazakhstan. On 4 February 2014, the Supreme Court of Kazakhstan rejected the author's supervisory appeal request. The author therefore contends that he has exhausted all available domestic remedies.

The complaint

3.1 The author claims that his rights under article 9 (1) of the Covenant were violated, since he was subjected to arbitrary detention. His arrest was not approved by a judge until 9.15 p.m. on 6 June 2012, 50 hours after his initial apprehension.

3.2 The author submits that his right to a fair trial by a competent, independent and impartial tribunal, under article 14 (1) of the Covenant, has been violated. He and his lawyer, Mr. Sarsenov, had only 10 working days to study the criminal case file, consisting of 56 volumes, in violation of his rights under article 14 (3) (b). The appointment of the lawyer, T.G., was not lawful and was made against the author's will, since he asked to be represented by his privately retained lawyer, Mr. Sarsenov. The appointment of another lawyer, Z.S., at a later stage of the proceedings was also unlawful and violated his right to legal assistance of his own choosing under article 14 (3) (d). He submits that he was compelled to confess guilt and testify against himself, and that his forced confession was considered as evidence against him, in violation of his rights under article 14 (3) (g).

State party's observations on admissibility

4.1 In notes verbales dated 13 October 2015, 2 March 2016 and 10 October 2016, the State party submitted its observations on admissibility. The State party states that on 6 February 2013, the military appeal court upheld the first instance court verdict. On 21 June 2013, the military cassation court rejected the author's cassation appeal since it found the lower court's decision lawful and substantiated. On 2 September 2013, the Supreme Court dismissed the author's application for supervisory review. On 17 October 2013, the Procurator General refused to initiate a protest of the judicial decisions through the supervisory review procedure. On 13 December 2013, the President's Pardon Commission rejected the author's application for pardon. On 4 February 2014, the Supreme Court rejected another application for supervisory review. Thus, the State party accepts that the author has exhausted all the available domestic remedies.

4.2 The State party maintains that the communication is inadmissible under articles 1 and 3 of the Optional Protocol and rule 96 (a) and (b) of the rules of procedure, since the submission is not signed by the author and does not contain the legal authorization of his two representatives.

State party's observations on the merits

5.1 In a note verbale dated 2 March 2016, the State party submitted its observations on the merits. It maintains that there was no violation of the author's rights under articles 9 or 14 (3) (b), (d) and (g) of the Covenant.

5.2 The State party asserts that the principles of lawfulness, fairness and equality of arms (adversarial criminal proceedings) have been fully respected in the author's case. The author was found guilty based on the body of evidence collected by the operative investigative group. In his initial confession, the author specifically indicated that he had murdered 15 servicemen. According to the expert's conclusion, the fire at the military buildings was not caused by the explosion of grenades and bullets. The author himself testified that there were no grenades at the border post and admitted that he had burned the bodies and the buildings without using explosives.

5.3 On 5 and 6 June 2012, the author described to his cellmate in detail how he had murdered the servicemen, shooting them down. The author wrote a full confession during the five hours between the end of his first interrogation and the beginning of his second interrogation as a suspect. The State party challenges the interpretation of the author's counsel that the confession is inadmissible evidence in violation of article 179 of the Code of Criminal Procedure as the author was already a suspect at the time he wrote the

confession. In his confession, the author did not fully confess his guilt. Later on, he acknowledged that he had stolen some items from the local huntsman, K.R., a fact of which the investigators were not aware. Furthermore, he described the exact circumstances of the theft of personal effects and firearms, his defection and the destruction of military equipment. The author confessed his guilt during the face-to-face interrogations on 6, 11 and 15 June, as well as during the on-site reconstruction at the crime scene that was conducted in his presence on 7 and 8 June. The examination conducted by a forensic psychologist after the author had retracted his confession concluded that no psychological pressure had been applied to him. Numerous expert opinions[8] and pieces of evidence confirm the veracity of the author's statements at the initial confession, including the medical, biological and ballistic forensic examinations, DNA analysis of corpses and biological remains, the crime scene examination, the examination of the logs kept by the huntsman, K.R., of the citizens allowed in the frontier area, and the analysis of the evidence in its entirety. Furthermore, in his conversation with his cellmate on 13 June, the author confessed to having fired the shots using one machine gun, which was corroborated by the forensic ballistic examination of the bullets and bullet shells. In addition, all six persons who passed through the frontier region at the time of the crime and were registered in the huntsman's log had an alibi.

5.4 On 25 July 2012, the author retracted his confession, claiming that it had been extracted by the law enforcement officers on 5 June 2012 under psychological pressure, lies and threats. As a result, a preliminary investigation (*проверка*) was opened against the police officers concerned. On 24 August 2012, the investigating body refused to initiate criminal proceedings owing to a lack of corpus delicti. The author refused to participate in further investigative actions in that regard.

5.5 On 28 September 2012, the investigation into allegations that the author had been given psychotropic substances with the aim of extracting a confession was closed and the allegations dismissed. The numerous examinations of the author in that respect (medical forensic examinations on 6, 9 and 26 June and toxicological examinations on 26 June, 13 July and 28 September 2012) did not show any physical injury or traces of drugs or other psychotropic substances in his body. Thus, the State party denies that the author was subjected to any psychological pressure or torture.

5.6 The video recordings of the pretrial investigation demonstrate that the author described in detail and without any pressure the circumstances of the murders as if his actions had been "natural things". He spoke calmly about the murders in great detail to different people: the police officers, the psychologist and his three cellmates. On 5 December 2012, the author stated again in the courtroom that he had been subjected to psychological pressure and torture during the pretrial investigation; he claimed that a witness, B., had deceived and pressured him. However, the author himself gave up his right to question that witness.

5.7 In court, the author confirmed that he had stolen items from the murdered persons because "they did not need them anymore". He had also stolen from a safe in the temporary border post secret military diagrams of the location of military posts, his military identity and maps of the area in order to facilitate his defection and escape after committing the murders. The State party maintains that the author's claims that he was not aware of the secrecy of the diagrams owing to his lack of knowledge of the Kazakh language are without grounds as his military training and instruction were conducted in Kazakh.

5.8 The author's actions were rightly categorized as defection from the army with entrusted arms; during the preliminary investigation, the author did not deny stealing a Makarov pistol. Furthermore, the author's defection was confirmed by the testimony of the servicemen who apprehended him on 4 June 2012 around 4 p.m. At the moment of apprehension, the author was wearing civilian clothes and had his military identity in his pocket.

[8] From the verdict and the appeal court decision, it transpires that a total of 73 different expert examinations were conducted during the trial.

5.9 The State party submits that, as is clear from the court transcripts, the author's counsel, Mr. Sarsenov, did not appear at the court hearing on 29 November 2012. The court continued the trial hearing with the participation of counsel S.E. He stated that he was unable to provide qualified legal aid as he was not sufficiently familiar with the case file materials. At the time, S.E. had been involved in the case for 10 days, since 19 November 2012. On 30 November 2012, neither S.E. nor Mr. Sarsenov appeared at the trial hearing. S.E. informed the court that he was ill and needed to be hospitalized for treatment. Mr. Sarsenov, for his part, provided no information about his failure to appear. Thus, the author remained without professional legal assistance. In the light of that, on 30 November 2012, the trial judge sent a letter to the bar association of the town of Taldikorgan requesting the appointment of a defence counsel who had clearance to work with secret documents, to represent the author. On the same date, Z.S. stepped in to defend the author and participated in two trial hearings. That appointment was necessary due to the failure of the two counsels to appear in court and in order to ensure legal assistance for the author.

5.10 On 4 June 2012, the author was transported by helicopter from the Sari Bokter border division to Usharal town at 8.25 p.m., later than the time that the author had claimed. While in the Sari Bokter border division, the author's movements and freedom were not limited.[9] On 4 June 2012, at 9 p.m., the author was called for questioning, initially as a witness. However, the fact that he was in civilian clothes, and the information received in the meantime that a Makarov pistol had been found in the remote shepherds' hut, together with the author's military identity, money and valuables belonging to the murdered servicemen, raised suspicions. The first investigative act with the participation of the author as a suspect began at 9.25 p.m. He was informed in writing about his rights as a suspect, and did not make any requests, including regarding a defence counsel. The investigator drew up a protocol[10] and ensured that a State-appointed counsel, T. G., was present from the moment the author was interrogated as a suspect, in accordance with the law.

5.11 The State party rebuts the claim that the author was not informed about his right to immediately inform his relatives by telephone about his arrest and the location of his detention, as these rights were listed in the aforementioned protocol. The author chose another way to inform them about his detention and a written notification was sent on 5 June 2012 to his mother, at her address. On 9 July 2012, the author's mother visited him in his place of detention in the Alakolsky district.

5.12 All the investigative action, including the experts' examinations, took place with the participation of the defence counsel, T.G.,[11] who had sufficient time for private discussion with the author before each investigative step.

5.13 As for the author's allegation that after his de facto detention as a suspect, he was compelled to confess guilt and testify against himself, and that his forced confession was considered as evidence, the State party submits that on 4 June 2012, following the author's transportation to the border division, he was recognized as a suspect by a ruling of the investigation team chief, S.A.S., his rights were explained to him and his interrogation was conducted according to the law. In his confession, the author not only admitted to committing the crime, but provided information about additional crimes such as the theft of the belongings of the huntsman, K.R., to which he had not confessed during the first interrogation as a suspect on 4 June 2012. Moreover, a confession (*явка с повинной*) could be accepted at any moment, including before the indictment. The author voluntarily provided information about the theft in the house of the huntsman although there were no suspicions or charges against him on that account.

5.14 The State party submits that, as the confession was written by the author during his de facto detention, the document could not be referred to as direct proof of his guilt. At the same time, the court assessed the information about the circumstances of the murders and other crimes in the confession together with all the evidence in the case. Thus the court concluded that the author's acknowledgement of guilt was fully corroborated in the course

[9] He was able to hide the wedding ring he had stolen from one of the murdered servicemen in the car that took him from the heliport to the border division.

[10] A copy of the protocol is not provided.

[11] The State party adds that this is confirmed by the counsel's signature on all the protocols.

of the proceedings. In doing so, the court did not take the author's confession as the basis for establishing his guilt.

5.15 As for the allegation that the author and his lawyer did not have sufficient time to study the case file, the State party submits that following the author's new indictment on 1 October, in which the author was charged with additional crimes, the author and his counsel, B., were officially notified on 2 October that they could access the file. The author and B. started to examine the file on 3 October and did not request additional time.

5.16 The State party disputes the date on which the author signed the protocol for completion of familiarization with the case file materials, claiming that the correct date is 26 October 2012, not 21 October 2012, as stated by counsel, Mr. Sarsenov. It argues that Mr. Sarsenov was notified in writing several times and there was a case file review schedule established for familiarization with the case materials. However, Mr. Sarsenov was absent for a long period of time outside of the country for private reasons. At the same time, the author and his defence counsels B. and M., as well as representatives of the victims, reviewed the entire case file and became familiar with all the case materials. On 11 October 2012, Mr. Sarsenov was informed in writing that the period to review the case file had begun[12] and that the author and his other counsel had already been presented with 50 volumes of the case file. On 22 October 2012, the head of the investigative team wrote to Mr. Sarsenov again requesting him to appear on 23 October. Since the investigating officer considered that Mr. Sarsenov was deliberately protracting the review of the case materials, the investigating officer issued an order on 23 October setting a deadline for consulting the materials until 26 October 2012.

5.17 The State party maintains that the author was fully able to study the file together with his two appointed counsels, while his privately retained counsel was duly informed that the period to review the case file had begun and he had a genuine opportunity to study the materials.

5.18 As for the counsel's disagreement with the judgment, the legal categorization of the author's acts, the establishment of his guilt and the assessment of the evidence, the State party finds the arguments of the author's counsel to be groundless and based on subjective assumptions. It also rejects the author's counsel's claim that the motives of the crime were not established and proven. The State party submits that the author had suffered systematic harassment and insults by his fellow servicemen due to his Russian nationality. The court established the motive of the crime based not only on the author's testimony about his deteriorating relationship with fellow servicemen, but also on witness testimonies, operative investigative activities and expert examinations. The investigation relied on a forensic phonographic expert examination to identify and study the author's voice in recorded conversations with his cellmate and his mother, in which he described his motives and other details about the murders.

5.19 After killing the servicemen, the author murdered the only potential witness, the huntsman, K.R., stole confidential documents and private items from those he had killed and threw ammunition all around the post to fake an attack. The arguments of the author's counsel about procedural violations during the examination of the crime scene, the material evidence that was discovered and its removal from the crime scene and packaging are groundless.

5.20 The State party also challenges the claim that the first interrogation on the night of 4 to 5 June 2012 was illegal. According to article 212 of the Code of Criminal Procedure, an interrogation during the night is allowed in urgent cases. As for the author's claim that he was subjected to arbitrary detention, the State party disagrees with the timing sequence presented by the author, and explains that at first the author was considered as one of the possible victims of the crime. Then, after being discovered in the remote hut, he was transported by helicopter and arrived at the town of Ucharal at 8.25 p.m., where he was questioned first as a witness at 9 p.m. His rights as a suspect were explained to him at 9.25 p.m. The author was not immediately detained but transferred under the supervision of his

[12] According to the available information, Mr. Sarsenov was expected to return from China on 14 October 2012.

military unit command and brought before the specialized prosecutor. As the author was transported from a remote area, it took more than three hours to draw up the detention protocol.

5.21 As for the counsel's arguments that the author was not given copies of the procedural documents, including the protocols of his interrogations as a suspect and accused, as well as a copy of the author's testimony provided at the crime scene, the State party claims they are groundless. According to article 74 (2) (5), defence counsel has the right to familiarize himself with those documents, but not to receive copies of the documents about the investigatory actions in which the suspect, accused and the defence counsel have participated. The decision of 17 July 2012 rejecting the counsel's motion indicated that the counsel was not precluded from studying the respective procedural documents. However, he declined to review the documents, insisting on receiving copies.

5.22 As for the motions of the author's counsel, Mr. Sarsenov, for the recusal of judges, all his arguments were based on the lack of trust in the court because his different motions, such as to return the case for additional investigation, and about the allegedly unlawful appointment of Z.S. as counsel, were rejected. The State party maintains that Mr. Sarsenov did not provide any evidence that the judges were biased and partial in the author's case.

Author's comments on the State party's observations

6.1 On 21 April 2016, the author reiterated his main arguments while commenting on the observations of the State party. He maintains that the State party has not addressed or rebutted the claims in his initial submission concerning his arbitrary detention and confession under psychological pressure. He also reiterates that he had not had adequate time to prepare his defence. On 30 September 2012, four days before the period to study the case file had formally started, his privately retained counsel, Mr. Sarsenov, travelled to China for medical treatment. Mr. Sarsenov was not informed of the date of the completion of the preliminary investigation. The author maintains that he had requested in writing to be allowed to study the case file together with Mr. Sarsenov, but his request was ignored. Furthermore, he submits that for five days, his counsel was able only to make copies of the written materials, was not able to study the material evidence and was not able to make copies of the videos of the investigative activities. The author challenges the conclusion of the appeal court that he was given the opportunity to study the case materials in their entirety together with his State-appointed counsels, B. and M. The author claims they did not study the case file together. Moreover, he had refused the services of M. because the appointed counsel did not provide him with any legal assistance.

6.2 The author reiterates that the motive for the multiple murders was not proven and disagrees with the assessment and conclusions of the court with regard to the circumstances of the servicemen's and huntsman's murders. He challenges the findings of the expert opinions on which the court based its verdict and claims again that there were unidentified burned corpses at the crime scene. In accordance with his version, there were unknown attackers. The court's conclusion that the fire at the crime scene was not caused by an explosion is wrong as it is based on the opinion of K.S., an expert without the necessary qualifications to be an explosives expert. The author reiterates that the court did not allow one forensic medical expertise of the author requested by the defence. He maintains that the first instance court did not examine some evidence, that the judges abused their authority and that some of the evidence was falsified. He reiterates that during the pretrial investigation, his defence counsel was not allowed to make copies of procedural documents.

6.3 As for the unlawful appointment of T.G. as counsel, the author claims that the State party has not provided any proof to substantiate that he waived his right to a counsel of his own choosing. The same is true of the fact that the author was not allowed to contact his family by telephone. The State party has not provided any evidence that he waived his right to call his relatives and a counsel of his choice, and instead requested that a letter be sent to his mother.

6.4 With regard to the issue of access to secret documents, the author's counsel rejects the State party's assertion that lawyers have to undergo independently the necessary clearance procedure, as there is no reference to any such provisions in any legal norm. The

court dismissed his motion on that matter illegally and failed to apply the general principle in article 15 (1) of the Code of Criminal Procedure that the body conducting the criminal procedure must protect the rights and freedoms of the citizens involved in it, create the conditions for their implementation, and take timely measures to meet the legitimate demands of the participants in the procedure.

State party's additional observations

7.1 On 10 October 2016, the State party reiterated its previous observations.

7.2 As for the alleged violations under article 14, the State party reaffirms that the appointment of Z.S. as counsel was in accordance with article 68 (3) of the Code of Criminal Procedure and with article 14 (3) (c) of the Covenant, as everyone should be tried without undue delay. Mr. Sarsenov and S.E. had not participated in the court hearings since 29 November 2012, so it was justified to appoint new counsel. Throughout the course of the pretrial investigation and the trial, the author was represented by six defence counsels (T.G., B., Mr. Sarsenov, M., S.E. and Z.S.). Furthermore, the State party rebuts the argument of the defence counsel that his motions were ignored or denied by the court as false and unfounded. It claims that the court reviewed all the motions in accordance with the law. Concerning the allegation of insufficient time and facilities for the preparation of the defence with the counsel of the author's own choosing, the State party submits again that the appeal court reviewed that claim and concluded that the author had studied in full the case file together with two of his counsels, while Mr. Sarsenov did not study the file owing to his trip to China, notwithstanding the fact that he was duly notified of the completion date of the investigation. Several notifications were sent to him regarding the need for him to participate in the investigative activities and study the case materials, which were ignored by counsel. The State party maintains that Mr. Sarsenov was in the same position as B. However, the latter did not register any complaint about the time allocated to examine the case file. Article 72 (7) of the Code of Criminal Procedure stipulates that, in the event that several defence counsels participate in the proceedings in a criminal case, any procedural action in which the participation of the defence counsel is necessary cannot be considered illegal because of the non-participation of all counsels involved.

7.3 All the challenges regarding the court's assessment of the evidence, including the motive for the crime, premeditation on the part of the author in committing the crime, the establishment of guilt and the disagreement with the legal categorization of the author's acts, have been addressed by the State party and the author's claim that the court arbitrarily evaluated the evidence and denied him justice are unfounded.

7.4 Lastly, the State party submits once again that Mr. Sarsenov was informed about the need to obtain clearance in order to access the secret documents in the file. The author was charged and subsequently found guilty under article 172 (1) of the Criminal Code for illegally obtaining State secrets. For four months after being notified of the need for security clearance, Mr. Sarsenov did nothing in that regard but send a request to the Judicial Department and to the Bar Association in the town of Almaty. The fact that he did not take any other action to secure his access to the "secret documents" on the file demonstrates that his allegations are unfounded. The author's defence against the particular charge of illegally obtaining State secrets was ensured by M.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that

connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the State party's submission that the communication is inadmissible under articles 1 and 3 of the Optional Protocol and rule 96 (a) and (b) of the rules of procedure, since it is not signed by the author and does not contain a legal authorization of the two representatives who submitted it to the Committee. In this regard, the Committee notes that on 16 October 2013, the author authorized his counsel, Mr. Sarsenov, to represent him before the Committee and a copy of the authorization was submitted to the Committee. Moreover, the same privately retained counsel represented the author throughout the domestic proceedings as the only counsel of the author's own choosing (along with five more State-appointed counsels). Accordingly, the Committee finds that articles 1 and 3 of the Optional Protocol and rule 96 (a) and (b) of the rules of procedure do not preclude it from considering the communication, as submitted by Mr. Sarsenov.

8.5 The Committee notes the author's claim under article 9 (1) that he was deprived of his liberty and subjected to arbitrary arrest. It notes that the author considered himself to be de facto under arrest from 4.50 p.m. on 4 June 2012, when he was apprehended and handcuffed by the border patrol. It also notes the author's contention that his arrest was not approved by a judge until 9.15 p.m. on 6 June 2012, 50 hours after his initial apprehension. The Committee further notes the State party's claim that after being found by the border patrol, the author was taken, as a witness, from the remote border area to military unit No. 8484. The Committee notes that, as a serviceman, the author was placed under the supervision of the commander in charge and questioned first as a witness and later as a suspect at 9.25 p.m. on 4 June 2012. On 6 June 2012, he was charged with multiple murders. In the light of the circumstances of the case and the State party's explanation, the Committee considers that the author has failed to substantiate sufficiently his allegation that he was not brought promptly before a court or that his detention was otherwise arbitrary under article 9 of the Covenant. Accordingly, the Committee considers that those claims are inadmissible for lack of substantiation under article 2 of the Optional Protocol.

8.6 The Committee notes the author's claims under article 14 (1) and (3) (g) of the Covenant concerning procedural irregularities during the trial in relation to the assessment of the author's guilt, the examination of the evidence, the expert witnesses and their examination conclusions, and the classification of the author's crimes by the domestic courts. The Committee recalls its jurisprudence that it is not for it to substitute its views for the judgment of domestic courts on the evaluation of facts and evidence in a case, unless the evaluation is manifestly arbitrary or amounts to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality.[13] If a jury or court reaches a conclusion on a particular matter of fact in the light of the evidence available, it is for the author to show that the decision was manifestly arbitrary or amounted to a denial of justice. In the present case, the Committee notes that the author disagrees with the Court's assessment and findings, but has not managed to show that the domestic court decisions, which were based on physical evidence, expert opinions and witness testimonies, were clearly arbitrary or amounted to a manifest error or denial of justice. It therefore considers that the author's claims have not been sufficiently substantiated for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol. The Committee also notes that the author's other claims under article 14 (1) of the Covenant, such as pressure exerted on him by the presiding judge to be present at the hearings, are of a general nature and have not been sufficiently substantiated for the purposes of admissibility.

8.7 The Committee notes the author's claim under article 14 (3) (b) that his only privately retained counsel, Mr. Sarsenov, had no access to the case materials that had secret status owing to a lack of clearance. The Committee also notes the State party's claim that the privately retained counsel did not have clearance to work with secret documents

[13] See, inter alia, communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision of inadmissibility adopted on 2 November 2004, para. 7.3; and No. 1138/2002, *Arenz et al. v. Germany*, decision of inadmissibility adopted on 24 March 2004, para. 8.6. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26.

because he did not take all the necessary steps to obtain it for four months after being notified of the need to obtain clearance. The Committee further notes that another lawyer representing the author had security clearance and access to those documents. Accordingly, the Committee considers that the claim under article 14 (3) (b) has not been sufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

8.8 The Committee notes the author's claim that the appointment of T.G. as counsel during the pretrial phase was not lawful and violated his right to legal assistance of his own choosing under article 14 (3) (d). However, the Committee also notes that it is not clear from the file whether the author explicitly rejected representation by T.G. at the pretrial investigation stage and requested the participation of counsel of his own choice. Accordingly, the Committee considers that the author's claim concerning legal assistance of his own choosing at the pretrial phase has not been sufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

8.9 The Committee notes the author's claim under article 14 (3) (g) that the trial court accepted his forced confessions as evidence. The Committee notes that the author's allegations in this respect are very general and inconsistent and that he does not provide specific information on the kind of pressure to which he was allegedly subjected. The Committee also notes that the author's conviction was based, as the court decisions show, on several pieces of evidence and not just on the author's confession. Accordingly, the Committee considers that the author's claim has not been sufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

8.10 As for the appointment of Z.S. as counsel at the hearings stage, the Committee notes that the court proceeded with her appointment owing to the absence of the author's two counsels. It recalls, in this connection, that the State party is under an obligation to "grant reasonable requests for adjournment",[14] and notes that the newly appointed counsel had only two days to study the voluminous file. Accordingly, the Committee considers that the author's claim under article 14 (3) (b) and (d) concerning the right to have adequate time and facilities for the preparation of one's defence and to have legal assistance of one's own choosing during the trial has been sufficiently substantiated for the purposes of admissibility.

8.11 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under articles 14 (3) (b) and (d) of the Covenant and therefore proceeds with the consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 Regarding the author's claims under article 14 (3) (b) of the Covenant, the Committee notes his contention that his only privately retained counsel, Mr. Sarsenov, was not given copies of some procedural documents; and that the author had to participate during some court hearings without the lawyer of his own choosing. It also notes the author's contention that he did not have adequate time and facilities for the preparation of his defence together with the counsel of his own choosing, as they were given only 10 working days, or 15 calendar days, to study the file, which consisted of 56 volumes of 250 pages each.

9.3 The Committee further notes the author's claim that his counsel had to be abroad for a certain period of time for medical treatment. It notes the State party's contention that there was a case file review schedule established for familiarization with the case materials, that Mr. Sarsenov was notified of the schedule for studying the case file materials in writing several times and did not notify the court of his absence owing to a health problem, and that

[14] See general comment No. 32, para. 32.

the author was able to study different parts of the case file with his State-appointed lawyers as he and his counsel, B., started to examine the file on 3 October and did not request additional time. The Committee also notes that Mr. Sarsenov was not able to participate in the court hearing on 29 November 2012 after the lunch break as he suffered a hypertensive crisis, while counsel, S.E., requested the court to adjourn the court hearing as he was not able to provide the author with the necessary qualified legal aid, as he had not been able to study the complete case file. The newly appointed counsel, Z.S., had only two days to study the file. The Committee recalls that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. There is an obligation to grant reasonable requests for adjournment, in particular when the accused is charged with a serious criminal offence and additional time for preparation of the defence is needed.[15] In the absence of other pertinent observations from the State party, the Committee considers that by not providing the author's newly appointed counsel, Z.S., with the opportunity to study the full case file and to have the period for examining the file extended and the hearings adjourned, the author's rights under article 14 (3) (b) of the Covenant have been violated.

9.4 The Committee notes the author's claim under article 14 (3) (d) that the appointment of counsel Z.S. during the trial was not lawful. Having concluded that, in the present case, there has been a violation of article 14 (3) (b) of the Covenant, the Committee decides not to examine separately the author's claim under article 14 (3) (d).

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 14 (3) (b) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, provide Vladislav Chelakh with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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[15] See general comment No. 32, para. 32. See also communications No. 282/1988, *Smith v. Jamaica*, Views adopted on 31 March 1993, para. 10.4; Nos. 226/1987 and 256/1987, *Sawyers, Mclean and Mclean v. Jamaica*, Views adopted on 11 April 1991, para. 13.6; No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005, para. 6.3; No. 594/1992, *Phillip v. Trinidad and Tobago*, Views adopted on 20 October 1998, para. 7.2; and No. 2304/2013, *Dzhakishev v. Kazakhstan*, Views adopted on 6 November 2015, para. 7.5.